

# SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

301-230-5224  
nregelin@srgpe.com

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Jeffrey W. Rubin  
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Hong Suk "Paul" Chung  
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Melissa G. Bernstein  
John D. Sadler  
Marc E. Pasickoff  
Alexis H. Perera  
Meradeth S. Campbell  
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Exhibit No. 120  
Zoning Ordinance Rewrite  
PH Dates: 6/16 & 6/30/08

William C. Gerson, II  
William B. Schroeder  
Lawrence M. Kramer  
Alexander C. Vincent  
Stacey L. Schwabach  
Courtney R. Sydnor  
Michelle Hunter Green  
Jawad O. Hepburn  
Mark R. Mann  
Max R. Maxinter  
Alan B. Sutton  
Elizabeth T. Paszyn  
Rachel E. Solomon  
Reza Gokasozli  
Edward P. Hennelberry  
Sakunas L. Waga  
Marc D. Lipman  
Johnny A. Shane  
Larry A. Gordon  
Lawrence Eisenberg  
Deborah L. Moran  
Laura L. Smith  
Ira E. Hoffman  
Special Counsel  
Philip R. Hochberg  
Karl L. Ecker

*Attorneys and D.C. corps as noted.*  
+ Virginia also • D.C. only  
• Maryland only • VA only  
• D.C. and VA only  
• MD and VA only

Writer's Direct Dial Number:

October 9, 2008

The Honorable Susan Hoffmann  
Council of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20852

Re: Off Premises Sale of Alcohol in Neighborhood Centers  
Burgundy Park Shopping Center Tia Ochi Restaurant

Dear Mayor and Members of the Council:

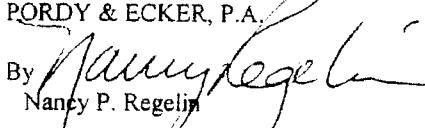
This is a follow-up to our August 25, 2008 letter regarding preserving the zoning or the allowable use that would permit an existing family owned restaurant in the Burgundy Park Shopping Center to continue off premises sale of alcohol as a permitted use. This Firm represents the owner of the Burgundy Park Shopping Center whose concern is the small businesses in the neighborhood center.

We respectfully request that off premises sale of alcohol be a permitted use in conjunction with a restaurant and exempt them from the conditional use provision in the proposed draft that prohibits off premises sales if the neighborhood center is next to single family homes (See MXC Footnote 1, Section 25.13.h, pages 6 and 7 of the 9-2-08 draft). Where else are the neighborhood centers with these small restaurants located but in the middle of the single family home neighborhoods?

The focus of the Council's discussions on the proposed prohibition of off-premises sale of alcohol appears to be centered solely on the Stonestreet Market and the type of alcohol sales use there. Let's differentiate under allowable uses the small restaurants found in the neighborhood centers whose small business' livelihood depends on both on-premises and carry-out food and beverage sales. Tia Ochi, a small independent family owned restaurant in Burgundy Park Shopping Center, holds a Class D Beer & Light Wine license which by state law authorizes its holder to sell beer and light wines at retail for consumption on the premises or elsewhere (off-premises). At Tia Ochi a customer can purchase beer or wine to accompany their dinner or to take out with their carryout pizza order.

Adding another category or modifying the next category in 25.13.03.h to permit off premises sale of alcohol in conjunction with a restaurant use will protect these neighborhood restaurants that have provided local, ethnic, and convenient food service to their neighborhoods for many, many years. Thank you in advance for your consideration and adoption of this request.

Very truly yours,  
SHULMAN, ROGERS, GANDAL,  
PORDY & ECKER, P.A.

By   
Nancy P. Regelin

11921 Rockville Pike, Rockville, Maryland 20852-2743 • Tel: (301) 230-5200 • Fax: (301) 230-2891  
Washington, D.C. Office: (202) 872-0400 • Greenbelt, Maryland Office: (301) 699-9883 • Tysons Corner, Virginia Office: (703) 684-5200  
E-mail: lawfirm@srgpe.com • Internet: www.shulmanrogers.com

Exhibit No. 121  
 Zoning Ordinance Rewrite  
 PH Dates: 6/16 & 6/30/08



"Talisman Associates"  
 <talism@verizon.net>

10/10/2008 03:43 PM

To <mayorcouncil@rockvillemd.gov>,  
 <shoffmann@rockvillemd.gov>,  
 <jbritton@rockvillemd.gov>,  
 cc "Naomi Belkin" <naomi\_talisman@verizon.net>,  
 "Mahyar" <mahyar@att.net>

bcc

Subject Zoning heights

October 10, 2008

Dear Mayor and council:

As we come to discuss zoning heights again, I would like to reiterate my objections. Anything below our current height of 75 feet greatly reduces the shopping center's potential for development. Our shopping center is very small and a greater height would be much more attractive to developers as they would have the opportunity go up to seventy percent more space. Many of the owners of the shopping center, myself included, have been invested in our property for over 20 years and it would be extremely unfair of the city to devalue the property through zoning and putting strict limits on any future redevelopment.

The shopping center is on a major highway and we pay substantial taxes because of our location. If the city should move to restrict our zoning height it would mean that the city is not interested in using our tax dollars to improve our area. The owners plan to stay for a long time to come and so, we have the best interests of our community in mind. We believe that a redevelopment can be attractive and of high quality, no matter what the height. We plan to guard our interests and want to maintain the ability to plan a shopping center that would add value to the community.

These are extremely trying financial times. We are doing our best to provide for our community. It is of concern that after the hours of meetings and recommendations by professionals, we still cannot be assured that a positive decision about our investment and our future will be respected. The zoning height is the one thing that could dramatically devalue our investment. We are not interested in redevelopment now or even in the near future. We do insist that the zoning height gives us leverage strength over future development. Unlike most shopping centers we are a condominium of small business owners and this property is our major asset.

Sincerely,  
 Naomi Belkin  
 President, Twinbrook Mart Condo Association  
[naomi\\_talisman@verizon.net](mailto:naomi_talisman@verizon.net)

# Holland+Knight

Tel 301 654 7800  
Fax 301 656 3978

Holland & Knight LLP  
3 Bethesda Metro Center, Suite 800  
Bethesda, MD 20814-6337  
www.hklaw.com

**Routed To:**

☒ Council

☐ City Clerk

☒ City Manager

☐ City Attorney

☐ Council Support Specialist

☐ Other \_\_\_\_\_

October 13, 2008

Exhibit No. 122  
Zoning Ordinance Rewrite  
PH Dates: 6/16 & 6/30/08

William Kominers  
301 215 6610  
William.kominers@hklaw.com

## VIA ELECTRONIC AND OVERNIGHT MAIL

The Honorable Susan R. Hoffmann, Mayor,  
and Members of the Rockville City Council  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

RECEIVED  
CITY CLERKS OFFICE  
2008 OCT 14 AM 10:11

Re: Proposed Article 17, Final Draft Rockville Zoning Ordinance -- High Voltage  
Transmission Lines

Dear Mayor Hoffmann and Members of the Council:

The purpose of this letter is to respond to comments made at the October 6, 2008, worksession on the provisions of proposed Article 17 of the Final Draft Zoning Ordinance related to high voltage transmission lines. Unfortunately, I was not able to attend the worksession and was therefore unable to respond immediately to explain why some of the language might still be relevant in Article 17.

The provision previously identified as Section 25.17.03.a.2 of Article 17 replicates the provision in Section 25-437(a) of the current Ordinance. This Section was created in the mid-1990s at the time of the development of the townhouse community known as the Villages at Tower Oaks. Section 25-437(a) was subsequently applied in conjunction with the development of the King Farm. This provision of the Code intended to recognize and establish a distinction in the undergrounding requirements by creating one type of treatment for high voltage transmission lines and a different treatment for lower voltage distribution lines that serve individual developments.

The matter of undergrounding the distribution lines that actually serve a development has never been questioned. On the other hand, the treatment of high voltage transmission lines, which do not serve individual developments directly, has been dealt with as a wholly different matter. The City recognized at the time of the creation of

The Honorable Susan R. Hoffmann, Mayor  
October 13, 2008  
Page 2

Section 25-437(a), that there is little nexus between a development on a particular property and those high voltage transmission lines that may simply pass through a property when connecting different substations or other transmission facilities. The transmission lines serve very broad areas of the City, as compared to the individual distribution lines that serve a particular development and therefore have a direct relationship to that development. In addition, based upon information provided by the utilities at the time, there is a significantly greater impact in terms of feasibility, area of land affected, and costs for installation and maintenance, in order to place high voltage lines underground -- as compared to distribution lines.

As a result of recognizing that the high voltage transmission lines did not have a nexus to a particular development, the City allowed an exception to the undergrounding requirement for these high voltage lines. Following the enactment of this text amendment, the high voltage line that previously ran through the site of the Villages at Tower Oaks was relocated to the north side of Wootton Parkway (but within the Tower Oaks property). That transmission line continues south from Wootton Parkway along the east side of Route I-270. The poles carrying the transmission line along I-270 are located within the right-of-way for I-270. The I-270 right-of-way directly adjoins the western boundary of the South Gateway site at the Tower Oaks project.

The west side of the South Gateway site of the Tower Oaks project contains guy-wires that extend into the site from the poles carrying the transmission lines that are located in the I-270 right-of-way. (The guy-wires support and stabilize the poles holding the transmission line.) The guy-wires and the related poles are not part of the electric distribution lines that would provide service directly to the South Gateway site or to other parts of Tower Oaks. The guy-wires are related to the major transmission line along I-270. The guy-wires themselves cannot practically be placed underground and still functionally support the poles. Since there is not an approved development for the South Gateway site at this time, one cannot be certain whether or not the eventual layout will require relocation of the guy-wires. But, because the poles will remain in place in the I-270 right-of-way, presumably the guy-wires will need to remain also. The first sentence of the proposed Section 25.17.03.a.2., "Exception," in the new Ordinance was included in the existing Ordinance as Section 25-437(a) in order to address this type of situation.

I understand that the Director of Public Works suggested at the worksession that retaining the first portion of Section 25.17.03.a.2 could be beneficial to the City in allowing the opportunity to deal flexibly with high voltage transmission lines in the future. In considering this language, please note that both the existing language in Section 25-437(a) and proposed language in the first sentence of Section 25.17.03.a.2 are each discretionary. The language only "allows" the Planning Commission "for good cause shown" to permit non-distribution lines (i.e., transmission lines) to be relocated

The Honorable Susan R. Hoffmann, Mayor  
October 13, 2008  
Page 3

above ground; the language does not require the Planning Commission to so agree. I would therefore recommend retaining the first sentence of Section 25.17.03.a.2, both to provide flexibility to the City in the future without requiring a new text amendment at such time.

At the worksession, Sondra Block, Assistant City Attorney, expressed the view that Planned Development projects, such as Tower Oaks, would be protected on this issue by the definition contained in Section 25.03.02 of the proposed Ordinance. This would prevent any future application of this flexibility without a new text amendment. On that basis, the entirety of Section 25.17.03.a.2 could be deleted from the new Ordinance, if the legislative history is clear. In discussion with Ms. Block, she indicated that the Staff Report could indicate that this provision is unnecessary because it is covered by the definition.

I appreciate your consideration of these additional comments. Please contact me if you have any questions.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers

cc: Arnold J. Kohn, Esquire  
Ms. Susan Swift  
Mr. James Wasilak  
Mr. Deane Mellander  
Sondra H. Block, Esquire  
Cynthia M. Bar, Esquire

# 5669868\_v2

Exhibit No. 123  
 Zoning Ordinance Rewrite  
 PH Dates: 6/16 & 6/30/08

**From:** "Linda Ekizian" <ekizial@att.net>  
**To:** <mayorcouncil@rockvillemd.gov>

**Date:** Sunday, October 19, 2008 04:27PM  
**Subject:** Zoning home-based businesses: Accessory Structures

History:       ↩ This message has been replied to.

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Dear All

Restricting home-based businesses in attached and not detached structures may have an unintended negative impact.  
 If enforced, home-owners who use or wish to use accessory buildings for their business may need to pave, shade or enclose their yard to comply. Please allow businesses to exist in attached and detached structures.

Thank you for your consideration.

Kind Regards,  
 Linda

Linda Ekizian  
 304 South Horners Lane  
 Rockville, MD 20850

RECEIVED BY CMO

Hungerford Civic Association  
c/o 193 Hardy Place  
Rockville, MD 20852  
October 29, 2008

Exhibit No. 124  
Zoning Ordinance Rewrite  
PH Dates: 6/16 & 6/30/08

Scott Ullery, City Manager  
City of Rockville  
111 Maryland Avenue  
Rockville, MD 20850

Re: Marlo Furniture warehouse use proposal

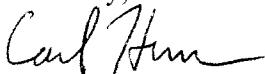
Dear Mr. Ullery,

Representatives of Marlo recently entered discussions with us to request our support for use of a portion of the Marlo building for self storage warehousing. As we understand the proposal, it wouldn't change the outside of the building, wouldn't result in any parking outside of the building's parking lot and may even reduce traffic from its current use. We invited them to present at our Hungerford Civic Association meeting on October 23. A majority of those present voted in favor of endorsing a change to the zoning applicable to the site to allow this usage with the proviso that neighborhood interests be protected in the provision of this permission.

This same issue was raised 8 years ago and in that process my predecessor David Hill acting in the capacity as president of the Hungerford Civic Association sent a letter to the City setting forth our position. We attach this letter and reiterate the concerns stated in that letter.

While we approve of a self storage facility in this location with the limitations set forth in the attached letter, we do not wish to make this a city wide position for this type of zoning. That would require a broader discussion with more stakeholders. Accordingly we would limit this permission if possible strictly to this site and this franchisee.

Sincerely,



Carl Henn  
President, Hungerford Civic Association



May 9, 2000

Hungerford/Stoneridge Civic Assoc.  
c/o 340 W. Edmonston Drive  
Rockville, MD 20852

Robert Spalding, Chief of Planning  
City of Rockville  
111 Maryland Ave.  
Rockville, MD 20850

Re: Marlo Furniture warehouse use proposals

Dear Mr. Spalding,

We write to acknowledge recent meetings with Marlo Furniture Company regarding their proposals on alternate uses for their warehouse, and our organizational opinion. At our first meeting April 5<sup>th</sup>, Marlo representatives gave a presentation on their proposals. At a follow-up meeting April 26<sup>th</sup>, the Association discussed and reached consensus on a collective position [described herein] that the present membership voted unanimously to approve.

The options Marlo representatives presented to the Association for alternative uses of the warehouse portion of their building on Rockville Pike were: 1) operating a franchised self-storage facility within their existing building, 2) converting it for leased office space, and 3) converting it for leased commercial retail uses. Supporting space utilization, build-out and transportation data were provided for each option. The need for a substantial parking structure to support office and retail uses was identified. Marlo expressed their preference for installing a self-storage facility. They suggested this as the least intrusive to surrounding land use. They also explained business motivations of requiring the least start-up investment on their part and fullest space utilization. They noted that this use most closely parallels their existing approved warehouse purpose of this space for their business. However, for storage beyond their own use, a text amendment to the City ordinance is necessary, since the underlying zoning does not allow this use. Office and retail uses are compatible with the existing zoning. Finally, an interest was expressed in modifying the appearance of their building, to perceptually minimize its apparent bulk and sparseness; and our ideas were solicited regarding features to accomplish this.

In general, foremost neighborhood impact concerns are increased traffic and minimizing the incongruity of massive building structures dominating detached family residences. The membership concurred that the proposed self-storage use, if set-up and operated as described, appeared to pose the least impact of the options. Yet we have an additional general concern applicable to such use. Would this specially amended self-storage use be appropriate in this zone and compatible with a residential neighborhood? This proposed use is traditionally classified as light industrial and therefore is zoned into such areas throughout the City and region. In further discussion, two angles on this concern solidified. First, would accommodating this use undermine the planned zoning of this site posing future problems on-site, in relation to residences, or set undesirable precedent in a sensitive City area? Second, encroaching industrial uses commonly have a blighting effect on nearby residential areas.

Notwithstanding the promised low-visibility of this proposal, would its very nature present a perceptual aspersion on the desirability of proximate residential areas? Our consensus was inconclusive on these aspects. Therefore, the Association position is conditional on aspects motivated by this two-part concern.

Our collective position is that we can support the proposed self-storage option given adequate public review of potential permutations of use. We believe the best vehicle for this review is to write a text amendment that is very narrow. It should be specific to this use at this site. And, if legally possible, granted only to this property owner and this franchisee; or at least be non-transferable without City/public



review. The objective is to make those seeking this approval directly accountable for it and to prevent the mutation of this specially granted use into an objectionable operation. We think this will promote a quality implementation and prevent a potential degradation of zoning effectiveness.

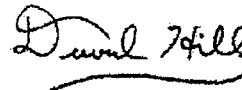
Further, we propose that the following enumerated items should govern the operation of this specially granted use. While this detail probably is not appropriate in the text amendment itself, we suggest that these be included in a binding operating agreement with the City.

- All storage activity must occur within the existing building. Parking of loaded trucks or trailers, and the storage of recreational vehicles outside should be prohibited.
- Wholesale leasing of multiple units or sub-divided warehouse space is not permitted.
- Entry of vehicles must occur through the entrance on the north façade of the building and handling of stored materials must occur within the building structure. Limited instances of protruding over-sized vehicles or use of existing loading bays can be exceptions, but not regular operating practice.
- Noise and hours-of-operation ordinance for activities in residential areas should apply.
- Generated refuse must be handled in appropriate, screened containers.
- A suitable plan for handling eviction of storage tenants must be arranged. The common practice of piling the property of evicted tenants outside the storage business is not acceptable here.
- An agreement for "understated" signage of this supplemental site use is desirable, preventing further visual clutter atop Marlo's pronounced signage/presence and to de-emphasize this light industrial use amid the Rockville Pike corridor and adjoining the neighborhood.
- The main traffic pattern for access to the storage facility should not occur from Fleet Street, since this would encourage more traffic closer to the neighborhood, and possibly cut-through traffic.

We look to the City to account for protections addressing these concerns and items in granting this use. Given this, we can support this alternative use. A sentiment is present to support local businesses, making reasonable accommodation to assure their prosperity, and thereby the economic health of the City. We believe our position is a reasonable accommodation(s). If this position cannot be met, we withhold support of the proposed self-storage use and prefer an office space use. Office use is preferred over retail, due to lower expected traffic at times that will vary from major neighborhood traffic spikes.

Lastly, our majority favors adding architectural features to the Marlo building to improve its appearance. Performing such alterations along with use modifications, seems like a good time to do so. However, we have no suggestions on specific additional features.

Sincerely,



David Hill, Officer  
Hungerford/Stoneridge Civic Assoc.

cc Julia Novak, Deputy City Manager [acting Dir. of Comm. Planning and Dev. Services]  
Carol Ann Perovshek, Neighborhood Resource Coordinator  
Adam Glickfield, Marlo Furniture representative



To:  
Cc:  
Bcc:  
Subject: Fw: Comment on Proposed Revisions to the City's Zoning Ordinance

Barbara Elesh

I live on Azalea Drive in the Regents Square par...

11/07/2008 05:59:32 PM

From: Barbara Elesh <BarbaraElesh@westat.com>  
To: "mayorcouncil@rockvillemd.gov" <mayorcouncil@rockvillemd.gov>  
Date: 11/07/2008 05:59 PM  
Subject: Comment on Proposed Revisions to the City's Zoning Ordinance

I live on Azalea Drive in the Regents Square part of Woodley Gardens. The City is considering changing the zoning of the Woodley Gardens Shopping Center, and I would like to add my comments.

It is good for the neighborhood to have a busy, successful little shopping center. If shops are vacant or if certain businesses attract loiterers, the safety of the neighborhood, including the park, is jeopardized. The two-story shopping center as it currently is is a pleasant size. A third floor could still maintain the character of the area (and would require an elevator, making it ADA accessible - which the second floor is not currently.) A fourth floor would tip the scales the other way - scale too big for the two-story residences throughout the entire neighborhood, too much traffic, parking problems.

If there is a way to limit the height of the shopping center building(s) to no more than three stories, I would support that. But if a change would be only from the present two-story to four-story, I would oppose such a change.

Thank you for the opportunity to comment.

Barbara M. Elesh  
887 Azalea Drive  
Rockville, MD 20850

Add to Section 25.14.27. PD-TO Zone

(November 12, 2008)

In the ground floor of an office building containing at least 190,000 gross square feet, located on a lot containing at least 2.5 acres, a Full Service Restaurant shall be a permitted use and shall be considered an Accessory Restaurant for all purposes, except that the restaurant is allowed an exterior entrance and the exterior signage is governed by the Planned Development Governing Documents, including the Comprehensive Signage Plan. Such restaurant must contain a minimum of 7,500 and a maximum of 10,000 gross square feet, of which less than 10% of that area may be used for a bar. Notwithstanding other provisions of Section 25.14.07.e, such restaurant use need not be separately listed as a use for a particular parcel in the approved Concept Plan for the Planned Development, so long as the principal office use is listed for that parcel.

# 5793866\_v2

**Fw: Addition to PD-TO Zone (Draft)**  
Deane Mellander to: Brenda Bean

11/12/2008 09:25 AM

Here's Bill's.

Deane Mellander  
Zoning Administrator  
240-314-8224  
fax 240-314-8210  
111 Maryland Avenue  
Rockville, MD 20850

----- Forwarded by Deane Mellander/RKV on 11/12/2008 09:25 AM -----

From: <william.kominers@hklaw.com>  
To: <sullery@rockvillemd.gov>  
Cc: <SSwift@rockvillemd.gov>, <DMellander@rockvillemd.gov>, <JWasilak@rockvillemd.gov>, <cindy.bar@hklaw.com>, <ajkohn@towercompanies.com>  
Date: 11/11/2008 03:49 PM  
Subject: Addition to PD-TO Zone (Draft)

---

Scott,

Attached, per our discussion, is a draft of an addition to the PD-Tower Oaks Zone (in the new Ordinance) to try to achieve the goal of allowing a high quality tablecloth restaurant in the new 2000 Tower Oaks Boulevard office building. This tries to accomplish the goal with a method of very limited applicability, and in a way that does not require years of processing. Our client is looking at this draft simultaneously, to make certain that it will meet the needs of the restaurants they are speaking to.

This issue/approach is the subject and purpose of our meeting next Monday with the Mayor. Per your instruction, I have copied Planning Staff.

Suggestions welcome.

Thank you.

Bill Kominers  
301-215-6610



<<5793866\_2.DOC>> 5793866\_2.DOC



ATTORNEYS

MARTIN J. HUTT  
DIRECT 301.657.0170  
FAX 301.347.1774  
MJHUTT@LERCHEARLY.COM

November 6, 2008

Exhibit No. 127  
Zoning Ordinance Rewrite  
PH Dates: 6/16 & 6/30/08

Mr. Jim Wasilak  
Ms. Sandra Smith  
Mr. Dean Mellander  
City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Revised Requests as to Political Signs

Dear Madam & Sirs:

We represent the Transportation Communications Union which was recently cited by the City for having a political sign in excess of the maximum 12 square feet allowed for temporary signs in a non-residential zone. Our client's property is zoned I-3 and backs up to Interstate I-270. The sign in question was mounted to the rear face of the building facing I-270. The sign was secured tightly to the face of the building so as not to create any possible safety issue. The maximum allowable square footage for all signage in the I-3 zone is 250 square feet.

We previously wrote to you on October 31, 2008 that that as part of your review and re-write of the City's Zoning Ordinance, that serious consideration be given to increasing the maximum square footage for election signs on buildings located in non-residential zones. We strongly recommend the following revised standards for such temporary political signs;

1. Only 1 sign is permitted not to exceed 125 square feet in size, if the sign is mounted to the top floor of face of the building. The sign cannot cover a window.
2. No single sign may exceed 48 square feet in size if the sign is free standing.
3. Since such signage is temporary the square footage does not count towards the maximum allowable permanent square footage allowed in the applicable zone.
4. Such signs can be illuminated.

The change from our earlier letter relates to allowing election signs to be illuminated. Upon reflection we recognized that illumination for temporary election signs will not adversely affect the use and enjoyment of adjoining properties nor adversely



SUITE 460 | 3 BETHESDA METRO CENTER | BETHESDA, MD 20814-5367 | TEL 301.986.1300 | WWW.LERCHEARLY.COM

ATTORNEYS

Page 2  
November 6, 2008

affect any other concerns the City might have but will allow the message to be seen at all times of the day.

5. Such signs if mounted to the building must be safely secured.
6. Such signs must be removed within 60 days of installation.

Very truly yours,

Martin J. Hutt

MJH:kss  
cc: Mitchell Kraus